

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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COURTESY AUTOMOTIVE GROUP, INC.,  
dba COURTESY SUBARU OF CHICO,

Plaintiff,

v.

SUBARU OF AMERICA, INC. and DOES  
1-50, inclusive,

Defendant.

No. 2:22-cv-00997 WBS DMC

ORDER

SUBARU OF AMERICA, INC.,

Counterclaimant,

v.

COURTESY AUTOMOTIVE GROUP, INC.,  
dba COURTESY SUBARU OF CHICO,

Counterdefendant.

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Plaintiff Courtesy Automotive Group, Inc. ("Courtesy")  
has filed motions to dismiss defendant Subaru of America, Inc.'s  
("Subaru") first amended counterclaim (Docket No. 44); to

1 retroactively extend time to file a responsive pleading to  
2 Subaru's first amended counterclaim (Docket No. 45); and to amend  
3 its own first amended complaint (Docket No. 47).

4 The relevant procedural history is set forth in the  
5 court's prior orders (see Docket Nos. 30, 42), and will not be  
6 recited in detail here.

7 I. Motion to Extend Time to File Responsive Pleading

8 Subaru filed its First Amended Counterclaim on May 9,  
9 2024. (See FACC (Docket No. 43).) Courtesy's deadline to file a  
10 response was May 23. On May 30, Courtesy filed a motion to  
11 dismiss the First Amended Counterclaim (Docket No. 44), along  
12 with a motion requesting a retroactive seven-day extension to  
13 file the motion (Docket No. 45). Courtesy asserts that its delay  
14 was good faith excusable neglect (see Docket No. 45); Subaru  
15 argues that Courtesy failed to show its delay was inadvertent  
16 (see Docket No. 50).

17 The court concludes that Courtesy's delay was excusable  
18 neglect. "Excusable neglect 'encompass[es] situations in which  
19 the failure to comply with a filing deadline is attributable to  
20 negligence' and includes 'omissions caused by carelessness.'" Lemoge v. United States, 587 F.3d 1188, 1192 (9th Cir. 2009)  
21 (citing Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd., 507  
22 U.S. 380, 394, 388 (1993)). "The determination of whether  
23 neglect is excusable is at bottom an equitable one, taking  
24 account of all relevant circumstances surrounding the party's  
25 omission. To determine when neglect is excusable, we conduct the  
26 equitable analysis specified in Pioneer by examining at least  
27 four factors: (1) the danger of prejudice to the opposing party;  
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1 (2) the length of the delay and its potential impact on the  
2 proceedings; (3) the reason for the delay; and (4) whether the  
3 movant acted in good faith.” Id. (citations omitted).

4 All four factors counsel towards excusing Courtesy’s  
5 delay here. Regarding the first two factors, the court cannot  
6 discern any substantial prejudice to Subaru or any delay to the  
7 proceedings before the court resulting from Courtesy’s missed  
8 deadline, especially since the parties, back in late May,  
9 conferred about Courtesy’s motion to dismiss and agreed upon a  
10 hearing date of August 5. (See Docket No. 45-1 ¶¶ 6-7.)  
11 Regarding the remaining two factors, Courtesy satisfactorily  
12 documents that its counsel’s delay in filing the motion to  
13 dismiss was an elementary, but sincere, mistake that was not  
14 caught in time.<sup>1</sup> (See id. ¶¶ 5, 13 (counsel confusing deadlines  
15 set forth by Fed. Rs. Civ. P. 12 and 15).)

16 Accordingly, the court will not deny Courtesy’s motion  
17 to dismiss on this basis.

## 18 II. Motion to Dismiss

19 Courtesy argues that Subaru’s First Amended  
20 Counterclaim should be dismissed because it is inconsistent with  
21 the conditions under which the court gave Subaru leave to amend.  
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23 <sup>1</sup> Subaru suggests that Courtesy’s instant motion for  
24 leave to amend its First Amended Complaint demonstrates  
25 Courtesy’s disregard for the court’s deadlines. (See generally  
26 Docket No. 50.) A motion requesting leave to amend does no such  
27 thing. Rather, it asks for permission to amend notwithstanding  
28 expired deadlines to amend by right. (Cf. FACC (Subaru amending  
counterclaims without seeking leave to do so, in contravention of  
court’s previously set conditions under which amendment shall be  
permitted).)

1 (See Mot. (Docket No. 44) at 7.) The court agrees.

2 Subaru previously asserted two counterclaims: a breach  
3 of contract counterclaim premised on Courtesy's alleged breach of  
4 a confidentiality provision; and a cognate declaratory relief  
5 counterclaim regarding the same allegations. (See Docket No.  
6 35.) On April 19, 2024, the court dismissed both counterclaims.  
7 (Docket No. 42.) The court gave Subaru twenty days' leave to  
8 amend its first counterclaim "if, and only if, it can properly  
9 allege actual effects of [Courtesy's alleged breach of the  
10 confidentiality provision] . . . ." <sup>2</sup> (Id. at 5.) <sup>3</sup>

11 Twenty days later, Subaru filed an amended counterclaim  
12 premised on an entirely different breach of contract theory:  
13 Courtesy's failure to pay Subaru its attorneys' fees incurred in  
14 relation to a separate administrative investigation. (FACC ¶ 1.)  
15 Subaru has no grounds on which to file the instant counterclaim:  
16 it does not allege any effects resulting from Courtesy's alleged  
17 breach of the agreement's confidentiality provision; its time to  
18 plead a new and different counterclaim by right has long since  
19 passed; and it neither sought nor was granted leave to plead the  
20 new claim. See Fed. R. Civ. P. 15(a)(1)-(2).

21 Accordingly, the court will dismiss Subaru's First  
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24 <sup>2</sup> The court dismissed the declaratory relief counterclaim  
25 with prejudice because it was wholly duplicative of the breach of  
26 contract counterclaim. (See Docket No. 42 at 5.)

27 <sup>3</sup> The court's Order of April 19 mistakenly referred to  
28 Subaru's, rather than Courtesy's, alleged breach of the  
confidentiality provision. (See Docket No. 42 at 5:9.) The  
court apologizes for any confusion this may have created.


1 Amended Counterclaim.<sup>4 5</sup> While dismissal will be without  
2 prejudice at this time, Subaru is admonished to follow the  
3 court's orders carefully if it intends to move for further leave  
4 to amend.

5 IT IS THEREFORE ORDERED that Courtesy's motion to  
6 extend time to file responsive pleading to first amended  
7 counterclaim (Docket No. 45) be, and the same hereby is, GRANTED.

8 IT IS FURTHER ORDERED that Courtesy's motion to dismiss  
9 Subaru's first amended counterclaim (Docket No. 44) be, and the  
10 same hereby is, GRANTED. Subaru's First Amended Counterclaim  
11 (Docket No. 43) is DISMISSED without prejudice.

12 IT IS FURTHER ORDERED that Courtesy's motion for leave  
13 to amend first amended complaint (Docket No. 47) be, and the same  
14 hereby is, DENIED as moot.

15 Dated: August 8, 2024

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17 **WILLIAM B. SHUBB**  
18 **UNITED STATES DISTRICT JUDGE**

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23 <sup>4</sup> The court therefore need not address Courtesy's other  
24 arguments in support of dismissal.

25 <sup>5</sup> Courtesy's remaining motion to amend its First Amended  
26 Complaint (Docket No. 47) is conditioned on the court denying  
27 Courtesy's motion to dismiss. (See Docket No. 47 at 2 ("To the  
28 extent the Court grants Courtesy's Motion to Dismiss, Courtesy  
withdraws this Motion.")) Accordingly, the court will deny this  
motion as moot.